

### **DETAILED ACTION**

#### **Vacate the office action mailed 8/18/09.**

Applicant's arguments, see paper, filed 4/27/09, with respect to the rejection(s) of claim(s) under 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made below.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-8, 10, 12-40, 52, 53 and 56-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Ramsay et al (US 6,750,178) and Wright et al (US 5,750,468).

Ramsay et al discloses glyphosate compositions comprising applicants' diamine surfactant compounds of formula 22 (x and y = 1; R1,R3,R4 and R5 = hydrogen)  
See abstract, column 4 line 46 – column 5 line 23. The diamine compounds serve as adjuvants for the composition (see abstract).

"Wright et al teach the utility of polyalkoxylated etheramine surfactants (applicants' surfactants of formula 5) in making glyphosate formulations. The surfactants may be in the form of amines, amine oxides, or quaternary ammonium compounds (columns 1-8). Additional materials may be added including "additives to further enhance herbicidal

activity, such as ammonium sulfate or fatty acids" (col 8, lines 26-34). The surfactants of Wright et al are used in order to improve the concentration of active agent (col 5, lines 31-40) and the long term storage stability of the pesticidal compositions (col 8, lines 12-25)."

Each of these references teaches that glyphosate may be used in its various conventional salt or ester forms.

One of ordinary skill in the art would be motivated to combine the teachings of these patents because they teach that the addition of surfactants to glyphosate compositions yields improved benefits, i.e., improvements in effectiveness or activity. The ordinary artisan would have been motivated to combine multiple ingredients (glyphosate, diamine surfactant, etheramine surfactant) as taught in the references in order to take advantage of the noted characteristics provided by the surfactants. One of ordinary skill in the art would be motivated to combine surfactants with different, clearly established advantages, and adjust the concentration of each to optimize their effects.

Thus, it would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to have combined the etheramine surfactant and diamine surfactant in glyphosate compositions because Wright et al specifically discloses the combination of glyphosate with applicants' surfactants of formula 5, and suggests the addition of components which can enhance the herbicidal activity of glyphosate.

Ramsay et al teach that diamine surfactant components of applicants' formula (22) enhance glyphosate activity; thus one of ordinary skill in the art would expect an enhanced herbicidal effect would result from adding the Ramsay instant diamine

surfactant compound to the compositions of Wright et al.

Determination of specific ratios of components is within the skill level of the ordinary artisan, as is the selection of the specific form of glyphosate (ester, IPA salt, K salt, etc.); absent evidence of criticality, the selection of these ratios and components are seen as obvious.

### ***Election Status***

Claims 42-47,49,51,54 and 55 are allowed. The prior art does not teach or suggest an invention comprising the instant compound of formula 5 and the instant compound of formula 27.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alton N. Pryor/  
Primary Examiner, Art Unit 1616